

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	CC Docket No. 99-200
SBC IP Communications, Inc.)	
Petition for Limited Waiver of)	
Section 52.15(g)(2)(i) of the)	
Commission's Rules Regarding Access to)	
Numbering Resources)	

COMMENTS OF VONAGE HOLDINGS CORP.

William B. Wilhelm, Jr.
Ronald W. Del Sesto, Jr.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Telephone: (202) 424-7500
Facsimile: (202) 424-4645

Attorneys for Vonage Holdings Corp.

Dated: August 16, 2004

Executive Summary

In its Petition, SBC IP Communications Inc. (“SBCIP”) requests that the Federal Communications Commission (“Commission”) waive its rules for obtaining numbering resources. In these comments, Vonage Holdings Corp. (“Vonage”) emphasizes that the Commission must proceed cautiously in considering SBCIP’s Petition. Should the Commission grant the waiver request, Vonage believes that larger matters embedded in SBCIP’s request will not be afforded adequate consideration. For example, issues intrinsically related to SBCIP’s privileged status as an affiliate of an RBOC must be addressed prior to allowing SBCIP to obtain direct access to numbering resources. Further, there are many more pressing issues that vex VoIP providers than those that are identified by SBCIP. For example, CLECs that Vonage purchases telecommunications services from encounter enormous difficulties in getting incumbent providers of wireline telecommunications services to comply with black letter law concerning the timely porting of telephone numbers.

Vonage also submits that granting the Petition on an expedited basis would be inappropriate because SBCIP has not provided enough details for the Commission to determine whether competition would be served should the Petition be granted. The Petition is devoid of necessary details regarding whether SBC Communications Inc. will allow all VoIP providers to interconnect at their tandems or whether this exclusive privilege will be extended only to its affiliate, SBCIP. Without knowing the details of tandem interconnection the Commission can not fairly evaluate SBC’s proposal. The Petition also does not address how SBCIP will comply with current requirements such as thousands blocks number pooling requirements, number resource utilization/forecast

reporting requirements (“NRUF”), local number portability requirements, and contribution to numbering administration costs. These requirements are implemented by carriers, not by information service providers, like SBCIP, that are end users of telecommunications services. Additionally, The SBCIP Petition is silent as to how number portability would work if SBCIP had the ability to directly obtain telephone numbering resources. Until all of these important questions are answered, the Commission should not act on SBCIP’s Petition.

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Vonage Urges Careful Consideration	2
III.	Interconnecting at the Tandem Level Must be Competitively Neutral.....	4
IV.	Using the Waiver Process Would be Inappropriate at This Time	5
V.	SBCIP’s Petition for Facilities-Readiness is too Vague to Be Granted on an Expedited Basis.....	6
VI.	SBCIP’s Petition is Fails to Address Important Matters of Numbering Administration	8
VII.	SBCIP’s Petition Does Not Address Number Portability	9
VIII.	Conclusion	10

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	CC Docket No. 99-200
SBC IP Communications, Inc.)	
Petition for Limited Waiver of)	
Section 52.15(g)(2)(i) of the)	
Commission's Rules Regarding Access to)	
Numbering Resources)	

COMMENTS OF VONAGE HOLDINGS CORP.

I. Introduction

In its Petition for Limited Waiver ("Petition"), SBC IP Communications Inc. ("SBCIP") requests that the Federal Communications Commission ("Commission") waive the rules governing the assignment of numbering resources. Vonage Holdings Corp. ("Vonage") believes that the Commission should either establish numbering rules that account for the needs of Voice over Internet protocol ("VoIP") industry generally, or, upon further disclosure of necessary details regarding the proposal, consider the possibility of a conditional grant of SBCIP's Petition if all providers of VoIP services are permitted to interconnect with SBC Communications Inc. in a non-discriminatory manner and in accordance with reasonable terms and conditions. Should the Commission consider a conditional grant of SBCIP's Petition, the Commission should first require SBC Communications Inc. and SBCIP to reveal all the terms and conditions of any proposed tandem level interconnection arrangement and allow for further public comment thereupon. The Commission should use this Petition as an opportunity to gather more details concerning SBCIP's proposal and determine if acceptable, fair, and non-discriminatory conditions can be attached for VoIP provider tandem interconnection

and non-discriminatory direct access to the North American Numbering Plan Administration (“NANPA”) or Pooling Administrator (“PA”) in order to obtain telephone numbers.

Vonage also urges the Commission to attend to the urgent matters in need of consideration concerning IP-enabled services, including the pending Vonage and Level 3 petitions.¹ Respectively, these petitions concern the appropriate classification of VoIP services under federal law as well as the jurisdictional nature of VoIP traffic, and interim compensation arrangements for IP-enabled services, matters of great importance to VoIP providers. Regulatory uncertainty in these areas is continuing to inhibit investment into VoIP services.

II. Vonage Urges Careful Consideration

Vonage emphasizes that the Commission must proceed cautiously in considering SBCIP’s Petition.. Specifically, SBCIP argues that a limited waiver of the Commission’s rules for obtaining numbering resources is required because “a VoIP provider’s ability to offer service may be limited by the locations, calling scopes, and installation schedules of the providers and products utilized to gain access to end offices” and that PRI lines “are not available in all central office serving areas.”² Vonage’s experience with competitive local exchange carriers (“CLECs”) is that the locations, calling scopes and installation

¹ See Petition for Declaratory Ruling, *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211 (filed Sept. 22, 2003); see also Petition for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b), *Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b)*, WC Docket No. 03-266 (filed Dec. 23, 2003).

² *SBCIP Petition*, at 3, 3n.7.

schedules are satisfactory.³ Additionally, Vonage has been able to obtain PRIs and DIDs in most markets. In Vonage's experience, the areas where PRIs cannot be obtained are those areas where incumbent carriers are protected from competition, *i.e.* rural areas, such that no competitive carriers are able to interconnect with the relevant incumbent.

It is unclear from SBCIP's Petition how granting SBCIP the ability to directly obtain telephone numbers from either the NANPA or the PA would resolve VoIP providers difficulty in serving rural areas. Providing competitive services to rural customers is a far more complex issue than simply allowing VoIP providers to obtain telephone numbering resources. Indeed, permitting a direct allocation would do nothing to mitigate RLEC insistence that data services provided through these circuits is somehow not subject to the *ESP Exemption*.⁴

³ Vonage's most vexing problem concerns the porting of numbers from incumbent carriers to the CLECs that provide Vonage's telecommunications services.

⁴ See *MTS and WATS Market Structure*, CC Docket No. 78-72 Phase I, Memorandum Opinion and Order, 97 FCC 2d 682, 715, ¶83 (1983) (*MTS/WATS Market Structure Order*); *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, Order, 3 FCC Rcd 2631, 2633, ¶17 (1988) (*ESP Exemption Order*).

III. Interconnecting at the Tandem Level Must be Competitively Neutral

Vonage is further concerned that if the Commission acts on SBCIP's waiver requests, larger matters embedded in the request will not be afforded adequate consideration. Specifically, SBCIP states that "by interconnecting with the PSTN on a trunk-side basis, at a centralized location, *e.g.*, a tandem switch, SBCIP believes that it can more efficiently utilize its softswitch and gateways to offer services that overcome the availability and scalability limitations inherent in the current methods of line-side interconnection to end office switches."⁵ Vonage highlights the fact that SBCIP enjoys a privileged status as an affiliate of an RBOC. While it is easy for SBCIP to claim that this type of interconnection would increase efficiencies, it is efficiencies that only SBCIP and other RBOC affiliates can take advantage of because, arguably, RBOCs have no obligation to allow *other* VoIP providers to interconnect with the PSTN on a trunk-side basis at a tandem switch. Furthermore, the CLECs that Vonage purchases telecommunications services from encounter incredible difficulties in getting traditional providers of wireline telecommunications services to comply with black letter law when it comes to timely processing porting requests issued by CLECs to incumbents. Vonage does not believe that facilities based carriers will voluntarily allow unaffiliated VoIP providers to interconnect at the tandem level. For this reason, it is critical for the Commission to establish competitively-neutral rules that allow *all* VoIP providers to interconnect at tandems in the manner described by SBCIP's Petition *prior to granting SBCIP's Petition for limited waiver*.

⁵ *SBCIP Petition*, at 5.

IV. Using the Waiver Process Would be Inappropriate at This Time

SBCIP argues that good cause exists for granting a limited waiver of the Commission's numbering rules because it would foster the deployment of new services and technologies to American consumers with minimal regulation. SBCIP also points to Section 706 as support for its Petition for limited waiver.⁶ Vonage submits that, absent further details and commitments regarding non-discriminatory tandem interconnection, SBCIP's Petition is premature. SBCIP has not yet provided enough details for the Commission to determine whether competition would be served by granting the Petition. For example, the Petition is devoid of necessary details as to whether SBC Communications Inc. will allow all VoIP providers to interconnect at their tandems or whether this exclusive privilege will be extended only to its affiliate SBCIP.⁷ Clearly, the public interest would not be served if only SBCIP will be granted the ability to interconnect at SBC Communications Inc.'s tandems. Further, in the absence of legally binding, enforceable commitment on the part of SBC Communications Inc. to allow non-discriminatory tandem interconnection, the Commission must deny SBCIP's Petition.

Vonage also believes that competition is not served by granting SBCIP's limited waiver as drafted. Unconditionally granting SBCIP's Petition at this time would simply bestow SBCIP with a significant competitive advantage over other VoIP providers given its affiliate relationship with SBC Communications Inc. The Commission should instead consider holistically the issue of allowing VoIP providers to directly obtain telephone numbering resources from the NANPA and the PA and adopt competitively-neutral rules. Accordingly, the Commission should evaluate if it is appropriate to adopt a framework

⁶ See *SBCIP Petition*, at 7-8.

⁷ See *infra*, Section IV.

that includes a set of rules that apply equally to all VoIP providers and ensures that facilities based telecommunications carriers cannot engage in discriminatory practices in favor of their affiliates (like tandem interconnection) that other companies would never receive.

V. SBCIP's Petition for Facilities-Readiness is too Vague to Be Granted on an Expedited Basis

The Commission must analyze the full scope of SBCIP's request. SBCIP fashions its request as one for limited waiver of a single Commission rule. Specifically, under existing Commission rules for obtaining telephone numbering resources, carriers must meet two criteria: (1) evidence that the applicant is authorized to provide service in the area for which the code is being requested, and (2) that the applicant is or will be capable of providing service within 60 days of the numbering resources activation date requested.⁸ SBCIP claims that the Company only requires a waiver of the state certification requirement. However, rather than proposing to comply with the existing facilities readiness criteria, SBCIP proposes a criteria unique to itself. In order to meet the facilities readiness requirement, SBCIP proposes to demonstrate:

(1) ownership or control of one or more softswitches connected to the PSTN via tandem interconnection; (2) provision of connectivity to the PSTN using traditional TDM signaling and SS-7 functionality; and (3) provision of location routing number ("LRN") functionality for implementation of local number portability.⁹

None of these factors are part of the existing facilities readiness requirement that must be met by carriers in order to obtain telephone numbering resources. As such, SBCIP is not

⁸ See 47 C.F.R. 52.15 §§ (g)(2)(i),(ii); *Central Office Code (NXX) Assignment Guidelines*, INC 95-0407-008, §§ 4.2, 4.2.1, 4.2.2 (rel. Jul. 23, 2004).

⁹ *SBCIP Petition*, at 10.

simply asking for waiver of one criteria relevant to obtaining numbering resources; instead, SBCIP is also requesting that the Commission accept SBCIP's own unique proposed facilities readiness standard.

Prior to waiving one criteria and accepting a modified version of a second, the Commission must investigate the complete meaning of SBCIP's proposal. For example, until competitively-neutral rules are adopted that allows for all VoIP providers to obtain tandem interconnection, the first criteria is one that only affiliates of RBOCs can satisfy. Further, additional clarification and explanation is needed regarding the meaning of "ownership or control" of the equipment and functionality detailed throughout SBCIP's proposed facilities readiness requirement. For instance, are the softswitches to be owned by SBCIP or by an affiliate? If owned by SBCIP, was it funded by ratepayers and then transferred to SBCIP or did SBCIP purchases the equipment on its own? Similar questions arise in terms of PSTN connectivity, SS-7 and LRN functionality. Does SBCIP own the equipment used to provide these services or are they owned by an SBCIP affiliate? If owned by an SBC Communications Inc., will all VoIP providers have access to the equipment and functionality utilized by SBCIP on the same terms and conditions? Will SBC Communications Inc. enter into a legally binding arrangement to make such equipment, features and functions available to all VoIP providers? Until answers to all of these questions are provided, the Commission should not act on SBCIP's Petition.

Other areas of ambiguity arise when examining the proposed facilities readiness requirement. Is it SBCIP's proposal that interconnecting in one tandem will allow SBCIP to obtain telephone numbers throughout: (1) the rate center in which the tandem is located?; (2) the geographic footprint served by the tandem?; (3) throughout an entire

NPA?; or (4) every NPA in the country? If limited in some manner, what is the basis for the limitation? How does SBCIP propose to meet the facilities readiness requirement for rural areas? In short, as drafted, SBCIP's Petition is far too vague regarding too many essential points for the Commission to approve at this time.

VI. SBCIP's Petition Fails to Address Important Matters of Numbering Administration

SBCIP also claims that aside from waiver of the state certification requirement and modification of the facilities readiness requirement, it will meet all other obligations concerning the use of numbering resources including compliance with thousands blocks number pooling requirements, number resource utilization/forecast reporting requirements ("NRUF"), local number portability requirements, and contribution to numbering administration costs.¹⁰ Left unaddressed by the Petition is how SBCIP proposes to comply with all of these requirements. For example, the NRUF form is completed and submitted by carriers, not end users, of telephone numbering resources. Until the Commission resolves the issue of the legal classification of VoIP providers under federal law, information service providers, like SBCIP, are end users of telecommunications services. Currently, no end users of numbering resources submit such forms regardless of whether they receive a substantial number of numbering resources. Submission of the NRUF form by SBCIP raises issues as to whether other entities such as Fortune 500 companies, or other information service providers, like America Online, can request direct assignment of numbers and whether they too would be granted similar waivers (without having to subject themselves to carrier regulation). Accordingly, rather than haphazardly approving a piecemeal arrangement specific to

¹⁰ See *SBCIP Petition*, at 10.

SBCIP, the Commission must first resolve issues of greater importance at issue in the *IP Enabled Services NPRM* and other related proceedings. In addition, the Commission must carefully consider the implications of “follow-me” waiver requests and whether such an *ad hoc* system would impede the efficient administration of numbering resources.

VII. SBCIP’s Petition Does Not Address Number Portability

One matter of great importance is number portability. Vonage relies on the telecommunications carrier that provides telecommunications services to Vonage to request number portability since only telecommunications carriers can make such requests. The SBCIP Petition is silent as to how number portability would work if SBCIP had the ability to directly obtain telephone numbering resources. Similar to issues relating to tandem interconnection, does SBCIP expect to directly request number portability from its affiliate SBC Communications Inc.? If so, would SBC Communications Inc. process such requests? Would SBC Communications Inc. process such requests because it believes it has a legal obligation to do so? Would it process the number portability requests of all VoIP providers? Will SBC Communications Inc. process number portability request to other VoIP providers in the same timeframe as it processes number portability requests of other VoIP providers? How will SBC Communications Inc. ensure that it acts in a non-discriminatory manner to non-affiliated entities? Will SBC Communications Inc. enter into legally binding agreements to process the number portability requests of all VoIP providers within the same timeframe as it processes requests received from SBCIP? Until all of these important questions are answered, the Commission should not act on SBCIP’s Petition.

VIII. Conclusion

Vonage maintains that the Commission cannot grant SBCIP's Petition as drafted. Instead, the Commission must obtain many additional details. Vonage submits that the Commission should cautiously consider the merits of the SBCIP Petition and evaluate whether it is possible to adopt a generic framework that would permit an RBOC-affiliated company like SBCIP to receive a direct assignment of numbers on the condition that SBC Communications Inc. also offer unaffiliated VoIP providers non-discriminatory tandem interconnection arrangements.

Respectfully submitted,

/s/
William B. Wilhelm, Jr.
Ronald W. Del Sesto, Jr.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Attorneys for Vonage Holdings Corp.

Dated: August 16, 2004